SUPREME COURT OF THE UNITED STATES.

No. 78.

SUYDAM & BOYD, PLAINTIFFS,

vs.

EPHRAIM G. PEYTON.

ON A CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT OF THE UNITED STATES, FOR MISSISSIPPI.

UNITED STATES OF AMERICA,
District of Mississippi, ss.

At a circuit court of the United States, in and for the ninth circuit and district of Mississippi, begun and held at Jackson, on the first Monday of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Present: The Honorable John McKinley, one of the associate justices of the Supreme Court of the United States, and the Honorable George Adams, district judge.

CIRCUIT COURT OF THE UNITED STATES,
May term, 1838.

SUYDAM & BOYD
vs.
E. G. PEYTON.

On a judgment rendered in favor of the plaintiffs in the above case, in the circuit court of the United States for the district of Mississippi, a *fieri facias* issued against the defendant, on the 20th December, 1837. The defendant gave a forthcoming bond, with Thomas Holiday as security, conditioned as follows, viz:

The condition of this obligation is such, that whereas the above named Suydam and Boyd have sued out of the circuit court of the United States for the district of Mississippi, a writ of *fieri facias* against the goods and chattels, lands, and tenements, of the above-bound Ephraim G. Peyton, for the sum of fifteen hundred and thirty-one dollars and thirty-five cents, with interest thereon, from the 17th day of November, eighteen hundred and thirty-seven, at *eight per*

centum per annum, until paid, and the sum of thirty-eight dollars and seventy-five cents, for their costs incurred thereon—which said writ of *fieri facias* has been levied on the following described property, to wit: two negro men, named "Moses" and "Jesse;" which said property is suffered to remain in the possession of the above-bound Ephraim G. Peyton, upon his executing this bond, with the above-named Thomas Holiday.

Now, if the above bound Ephraim G. Peyton do, and shall well and truly deliver the said property to William M. Gwin, marshal of the district aforesaid, at the court-house, in the county of Copiah, on the first Monday of May next ensuing, by twelve o'clock, *M.*, of that day, to be disposed of according to law, in discharge of the aforesaid writ of *fieri facias*—then, and in that case, the above obligation to be null and void; otherwise to remain in full force and virtue.

(Signed) E. G. PEYTON, [SEAL.]
THOMAS HOLIDAY, [SEAL.]

And now, at this term, May term, 1838, the defendant, E.G. Peyton, and surety, moved the court to quash the forthcoming bond, because it is conditioned for the delivery of the property therein mentioned, at the court-house of Copiah county, according to the statute of Mississippi in such case made and provided, instead of being conditioned for the delivery of the property at Jackson, the place of holding the court.

Upon this question the judges of the circuit court were opposed in opinion, and order the same to be certified to the Supreme Court of the United States, which is done accordingly.

UNITED STATES OF AMERICA,
Southern District of Mississippi, ss.

I, William Burns, clerk of the circuit court of the United States, in and for the ninth circuit and district aforesaid, do certify the foregoing to be a true copy from the record of the proceedings in the above-named case.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at Jackson, the first day of October, A. D. 1838, and in the 63d year of the Independence of the United States.

[SEAL.]

WM. BURNS, *Clerk.*

SUPREME COURT OF THE UNITED STATES.

No. 95.

JOHN GLENN AND CHAS. M. THRUSTON, PLAINTIFFS IN ERROR,

vs.

WILLIAM MITCHELL.

IN ERROR TO THE CIRCUIT COURT U. S. FOR MISSOURI.

INDEX.

	Original.	Print.
Writ of error	1 a	2
Declaration in ejectment	1	3
Writ of summons and marshal's return	2	4
Defendant's plea	2	4
Jury sworn.—Judgment	3	5
Bill of exceptions	3	5
Clerk's certificate	15	16
Assignment of errors	16	16
Citation and service	17	16
Copy of bond for prosecuting writ of error	18	17

J. & G. S. Gibson, printers.

[1 *a.*]

MISSOURI DISTRICT, *ss:*

The President of the United States to the honorable the [SEAL.] judges of the circuit court of the United States, for the eighth circuit and district of Missouri, greeting:

Because, in the record and proceedings, and also in the rendition of a judgment of a plea, in the said circuit court, between John Glenn and Charles M. Thruston, demandants, who are citizens of the State of Maryland, and William Mitchell, a citizen of the State of Missouri, defendant, a manifest error hath happened, to the great damage of the said demandants as aforesaid, as by their complaint appear:

We being willing that error, if any, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, you, distinctly and openly, send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same, together with this writ, before the chief justice and associate justices of said Supreme Court, on the second Monday of January next, at the city of Washington, the present seat of the National Government, that said record and proceedings being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court, the twenty-second day of April, in the year of our Lord one thousand eight hundred and forty-three.

JOSEPH GAMBLE,
Clerk U. S. circuit court, Missouri district.

[2 *a.*]

In obedience to the with[in] writ, I herewith transmit to the Supreme Court of the United [States] a transcript of the record and proceedings of said circuit court, in the plea in said writ mentioned.

JO. GAMBLE,
Clerk U. S. C. C. Mo. Dist.

MISSOURI DISTRICT, *sct:*

GLENN & THRUSTON
vs.
WILLIAM MITCHELL.

Be it remembered that, heretofore, to wit, on the fourth day of February, in the year of our Lord one thousand eight hundred and forty-two, John Glenn and Charles M. Thruston, by Mr. Lawless, their attorney, filed in the office of the clerk of the circuit

court of the United States, for the district of Missouri, their declaration in an action of ejectment against William Mitchell, in the words and figures following, to wit:

DISTRICT AND STATE OF MISSOURI,
County of New Madrid:

In the circuit court of the United States, April term, 1842.

John Glenn and Charles M. Thruston, who are resident citizens of the State of Maryland, plaintiffs, by their attorney, complain of William Mitchell, a resident citizen of the State of Missouri, and county of New Madrid, of a plea of trespass and ejectment, for that, heretofore, to wit, on the first day of January, in the year one thousand eight hundred and forty-one, at the county aforesaid, the said plaintiffs were entitled to the possession of a certain piece or parcel of land, situate in the county aforesaid, containing six hundred thousand acres, more or less, bounded on the east by the river Mississippi, on the west by the river St. Francis, or the most westwardly branch thereof, on the north by a line beginning at a point on the west bank of the Mississippi, opposite the head of an island, about one hundred arpens, French measure, below Little Prairie, and which Little Prairie is about thirty miles lower down on said river from the village of New Madrid, and bounded on the south by a line parallel to said north line, and beginning at a point on the west bank of the Mississippi, opposite to the mouth of the river formerly called Carbone, now called the Forked Deer river, said two parallel lines running in a southwesterly direction, until they respectively intersect the left bank of the said river St. Francis, said tract being the same granted by the Spanish government to Jaques Clamorgan, and his heirs, by grant, bearing date the ninth day of August, seventeen hundred and ninety-six; and being so entitled to the possession thereof, the said William Mitchell, afterwards, to wit, on the same day and year aforesaid, at the county aforesaid, entered into and upon the said piece or parcel of land and premises, and ejected, amoved, and put out the said plaintiffs therefrom; and then and there, and thereon, hitherto unlawfully withheld, and still unlawfully withholds, from the said plaintiffs the possession of the said piece or parcel of land and premises, and other wrongs to the said plaintiffs, with force and arms, then and there did, to the damage of the said plaintiffs of one thousand dollars; therefore they bring their suit.

On which declaration was the following endorsement:

Let summons issue. L. E. LAWLESS,
Atto. for Pl'ffs.

And thereupon, on the day of the filing of said declaration, a writ of summons issued out of the office of the clerk of said circuit court, in tenor and form following, to wit:

MISSOURI DISTRICT, *sct:*

The President of the United States to the marshal of the Missouri district, greeting:

You are hereby commanded to summon William Mitchell, a resident citizen of the State of Missouri, that he be and appear before the circuit court of the United States for the district of Missouri, at the next term thereof, to be held at the city of St. Louis, within and for the district aforesaid, on the first Monday of April next, then and there to answer unto John Glenn and Charles M. Thruston, resident citizens of the State of Maryland, of a plea of trespass and ejectment, to the damage of said plaintiffs of one thousand dollars. Hereof fail not, and have you then and there this writ.

Witness the honorable Roger B. Taney, chief justice of
[L. S.] the United States, the 4th day of February, in the year 1842.

Issued at office, in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

JO. GAMBLE, *Clk.*

And the marshal, to whom the same was directed, duly returned the said writ, with his return thereon endorsed as follows, to wit:

Executed the within process, by reading the within declaration and writ in the hearing of the within named William Mitchell, at his residence in New Madrid county, on the 28th day of February, 1842.

WM. H. RUSSELL,
Marshal of Mo. Dist.
By D. S. BINGHAM, *Deputy.*

And afterwards, to wit, at the April term of said circuit court, in the year one thousand eight hundred and forty-two, the said William Mitchell, by Messrs. Brent & Smith, his attorneys, appeared and filed his plea to the said action, in the words following, to wit:

And the said defendant, by Brent & Smith, his attorneys, comes and defends the force and injury above charged against him, and says, that he is not guilty of the said supposed trespass and ejectment, in manner and form as above, in the declaration of the said plaintiffs, is charged against him; and of this he puts himself upon the country.

And afterwards, to wit, at the April term of said circuit court, in the year one thousand eight hundred and forty-three, in the record of proceedings, is the following entry, to wit:

GLENN & THRUSTON
vs.
WILLIAM MITCHELL.

FRIDAY, 14*th April*, 1843.

Now, at this day, come the parties aforesaid, by their respective attorneys aforesaid; and thereupon also come a jury, to wit: William R. Dawson, Joel Cruttenden, Daniel M. Tucker, Edward H. Chapman, Joseph Belcher, Benjamin F. Harrison, William H. Powcke, Launcelot H. Calvert, John Shepard, Jesse Little, James S. Daugherty, William Salesbury — twelve good and lawful men, who, being duly elected, tried, and *and* sworn well and truly to try the issue within joined, between the parties aforesaid, upon their oath aforesaidj do say, that the said defendant is not guilty of the trespass and ejectment in the declaration mentioned, in manner and form as the said plaintiffs have, in declaring against him, alleged; therefore, it is considered by the court here that the said plaintiffs take nothing by their said writ, and that the said defendant go thereof without day. And it is further considered, that the said William Mitchell recover against the said John Glenn and Charles M. Thruston his costs and charges by him about his defence in this behalf expended, and that he have thereof execution.

And thereupon the said plaintiffs, by their attorney, filed their bill of exceptions in the words and figures following, to wit:

Be it remembered, that, on the trial of said cause, the plaintiffs gave in evidence a certain document purporting to be an original petition and grant or concession, which document was admitted and proved to have been executed by the officer of the Spanish Government whose name is thereto signed, and which grant is in the following words and figures, as translated from the original French and Spanish, in which said petition and grant are respectively originally written, and which translation is admitted to be correct, to wit:

To Don Charles Dehault Delassus, lieutenant colonel of the stationary regiment of Louisiana, and lieutenant governor of New Madrid and dependencies, &c.:

James Clamorgan, merchant, residing in the town of St. Louis, has the honor to represent, that he has been strongly encouraged, by his excellency the governor general of this province, to establish a rope manufactory for the use of his majesty's navy, and especially to supply the Havana, to which place his excellency wishes the petitioner should send the cordage, under his protection, conformably to the notice he has given you on that subject, in order that in all cases the petitioner should have recourse to your goodness, so as to be favored by all your power in an undertaking which may become very important to the prosperity of this dependency, and very profitable hereafter to all the inhabitants of Upper Louisi-

ana; so much the more as the petitioner, being connected in correspondence and matters of interest with a powerful house in Canada, they may procure hereafter a sufficient number of farmers to come to this country and teach the cultivation of hemp, and its fabrication into various kinds of cordage, in the most perfect manner, thereby fulfilling the views of the general government, which desires this undertaking to succeed by all just and honest means which it will be possible to use, in order to exempt his majesty from drawing in future from foreign countries an article so important in the fitting out of his navy. In hope of obtaining this end, the petitioner has made the most pressing demands to obtain from his correspondents in Montreal a considerable number of people fit for this cultivation, whom we are compelled by necessity to attract to this country, although at present political circumstances in Canada appear opposed to it, but in more peaceable times this object may indubitably be obtained.

Meanwhile, the petitioner is obliged to secure beforehand a title from you, sir, which will guaranty to him the property of a quantity of land proportionate to his views, in order to make an extensive establishment as soon as circumstances will appear favorable to his undertaking, and when his correspondents will be able, without conflicting with their sense of duty, to cause to emigrate to this country the number of people necessary to give a start to this culture, so much desired by the government.

Considering the above statement, sir, and in consequence of the particular recommendations of his excellency the governor general of the province, the petitioner hopes that you will condescend to give him the quantity of land he wishes to obtain, as well to favor him in the execution of all that may contribute in future to the prosperity of his project, as to facilitate to him the means to attract hereafter, from a foreign country, an emigration of cultivators, who may not be obtained, perhaps, but after a considerable lapse of time, and by promises of rewards which the petitioner shall be obliged to fulfil. Therefore he supplicates you to grant him, in the name of his majesty, the tract of land which lies on the western side of the river Mississippi, beginning at the place which is opposite the head of an island situate at about one hundred arpens below the Little Prairie, which lies at the distance of about thirty miles below the village of New Madrid in descending the current, and continuing to descend it until one is placed (on the same western side) right opposite the outlet commonly known under the name of River à Carbono, the mouth of which is on the eastern side of the Mississippi; so that from the said place, situated as aforesaid, opposite the mouth of the abovementioned river Carbono, a line be drawn, running towards the southwest, or thereabouts; said line shall be drawn parallel to the one which is to be drawn from the place situate opposite the head of the island, lying as here above stated, at about one hundred arpens below the said Little Prairie;

these two said lines shall run in the depth in a southwestern direction, or thereabout, and shall be the boundaries of each of those two opposite sides, until the extremities of the said two lines be sufficiently prolonged in the said direction, so as to reach the banks of the branches of the river St. Francis, the most distant from the Mississippi; which banks of said branches of [the] river St. Francis shall be the boundary and limit to the third side of the land demanded, and the banks of the Mississippi shall be the fourth (side of the same), to begin from the head of the aforesaid island of the Little Prairie, and descending the current on the western side until the place situated opposite the said river, called River à Carbono; in order that, as soon as it is in the petitioner's power, he may select and improve, within the said tract now solicited for, the land which is most suitable for the cultivation of hemp. A great part of this tract being overflowed by ponds and impracticable low swamps, it will prevent the improving of the whole in all its extents; and the petitioner is to enjoy the whole, and dispose of the same forever, as of a property belonging to him, his heirs or assigns; and even to distribute the said lands, or part of them, if he thinks proper, in favor of such person or persons who he may judge fit, in order to attain, as much as in his power lies, the accomplishment of his project.

And the petitioner shall never cease to render thanks to your goodness.

Done at New Madrid, this 1st day of August, 1796.

(Signed) J. CLAMORGAN.

NEW MADRID, *August* 9, 1796.

Having examined the statement contained in this petition; being satisfied as to the means of the petitioner, and his new partnership with the house of Todd, which may facilitate to him the accomplishment of his intended undertaking—the profits of which, if it succeed, will devolve in part to the benefit of this remote country, so miserable on account of the actual want of population; due attention being paid to the particular recommendations made to me by the Baron de Carondelet, governor general of these provinces; (attendo ha tenido a bien nombrar de commandante de este pueste y sus dependencias de buscar . . .) [supposed meaning]—*considering that he thought fit to recommend to the commandant of this post and dependencies to seek*, by all means, the mode of increasing the population and of encouraging agriculture in all its branches, and especially that of hemp.

It appearing to me that what the petitioner proposes will contribute to the attainment of this last recommendation, I do grant to him and his heirs the land he solicits, in the place where, and under the same terms, he asks the same, provided that it is not prejudicial to any person. And when he establishes the said land, he shall have it surveyed, not compelling him to have it done imme-

diately, as its extent is so considerable that it would occasion a ruinous expense to him if he was to execute said survey before the arrival of the families which he must send for to Canada; but as soon as they arrive, and he settles them on said land, he shall have to secure his property by having the same survey, in order afterwards to have recourse to the governor general to obtain the approbation, and the title in form, for this his concession.

(Signed) CARLOS DEHAULT DELASSUS.

RECORDER'S OFFICE, ST. LOUIS, *September* 21, 1836.

I certify the above and foregoing to be truly translated from the original filed in this office.

JULIUS DE MUN.

And said plaintiffs further gave in evidence a plat of survey, which is in the words and figures following, to wit:

[For map, see original.]

TERRITORY OF LOUISIANA, *District of New Madrid:*

I do certify that the above plat represents a tract of land containing four hundred and fifty-eight thousand nine hundred and sixty-three acres, or five hundred and thirty-six thousand nine hundred and four arpens twenty-nine perches, lying on the forks of the St. Francis river, —— miles below the Little Prairie, surveyed by me from the 30th of January last to the 12th of the present month, for and at the request of James Clamorgan, who claims the same under a Spanish title: beginning at two large sycamores, marked C, on the bank of the Mississippi, running up the same, and following the meanders thereof, to a large cotton wood and two sycamores, marked C, on the bank, at one hundred and ninety-five poles west, and five thousand eight hundred and forty-seven poles north from the beginning, and crossing the river Pemiscoe, near the mouth thereof; then from the cotton wood and two sycamores aforesaid, opposite the middle of the Island au Potin, running S. 45° W., 2504 poles, to a sycamore and pecan wood on the bank of Pemiscoe, after crossing the same at 1056 and at 3036 poles; thence N. 45° W., 1734 poles, to two elms, marked C, after crossing Pemiscoe at 670 and 1020 poles; thence S. 45° W., 6023 poles, to the middle fork of St. Francis, running east of south, crossing the same; and from thence keeping the same course, 3710 poles, to a sycamore and hackberry, on the south bank of the last fork of St. Francis river, running southeast; thence S. 10° W., 6572 poles, down the said fork, crossing the same several times, to a sycamore and willow, marked C, on the bank of the river; and from thence to the beginning.

(Signed) R. A. NASH, *Deputy Surveyor.*

6

St. Louis, Feb. 28, 1806.

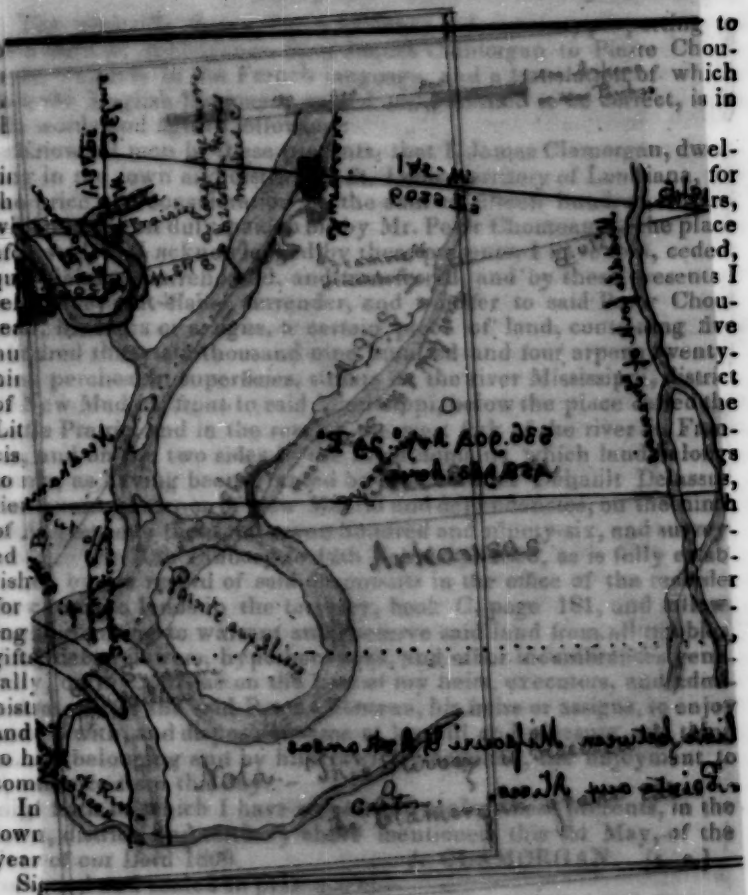
Received for record.

(Signed) ANTOINE SOULARD,
Surv. Gen. for the Terr. of Louisiana.

Recorder's office, St. Louis, Missouri,
September 22, 1836.

I certify the above plat and certificate of survey to be truly co-
pied from book C, pages 180 and 184, of record in this office.

E. R. CONWAY,
Rec. of land titles in the State of Missouri.



diately, as its extent is so considerable that it would occasion a ruinous expense to him if he was to execute said survey before the arrival of the families which he must send for to Canada; but as soon as they arrive, and he settles them on said land, he shall have to secure his property by having the same survey, in order afterwards to have recourse to the governor general to obtain the approbation, and the title in form, for this his concession.

(Signed) CARLOS DEHAULT DELASSUS.

RECORDER'S OFFICE, ST. LOUIS, *September* 21, 1836.

I certify the above and foregoing to be truly translated from the original filed in this office.

JULIUS DE MUN.

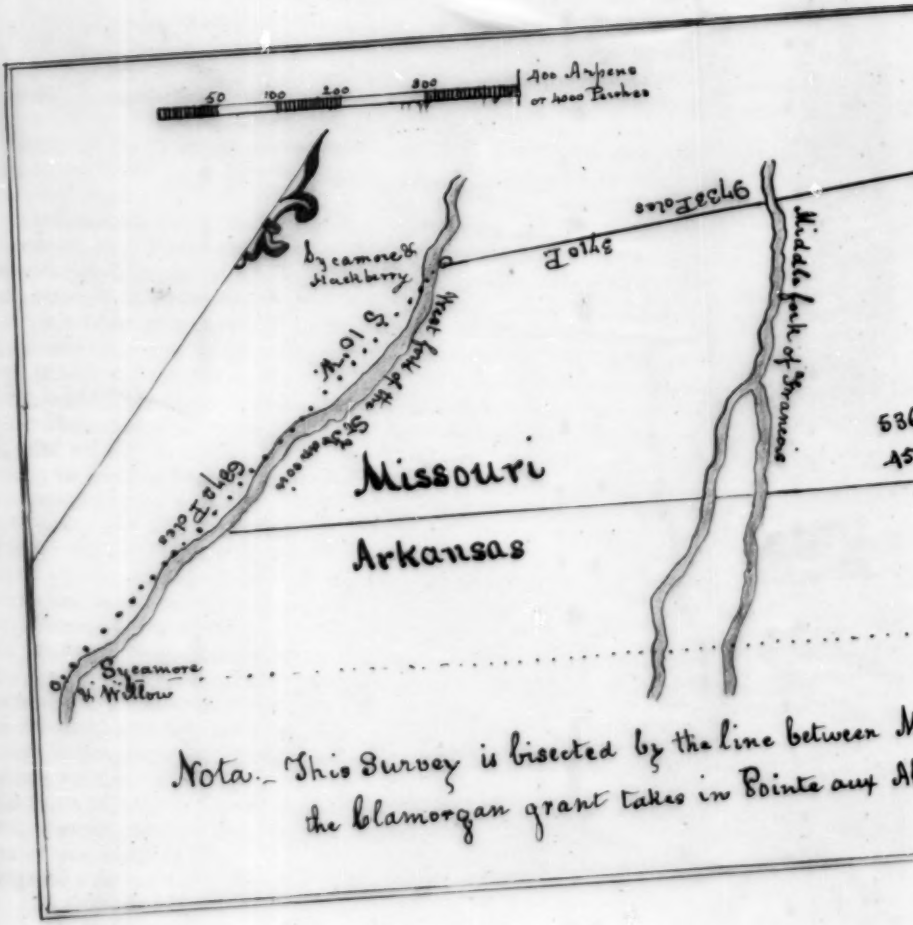
And said plaintiffs further gave in evidence a plat of survey, which is in the words and figures following, to wit:

[For map, see original.]

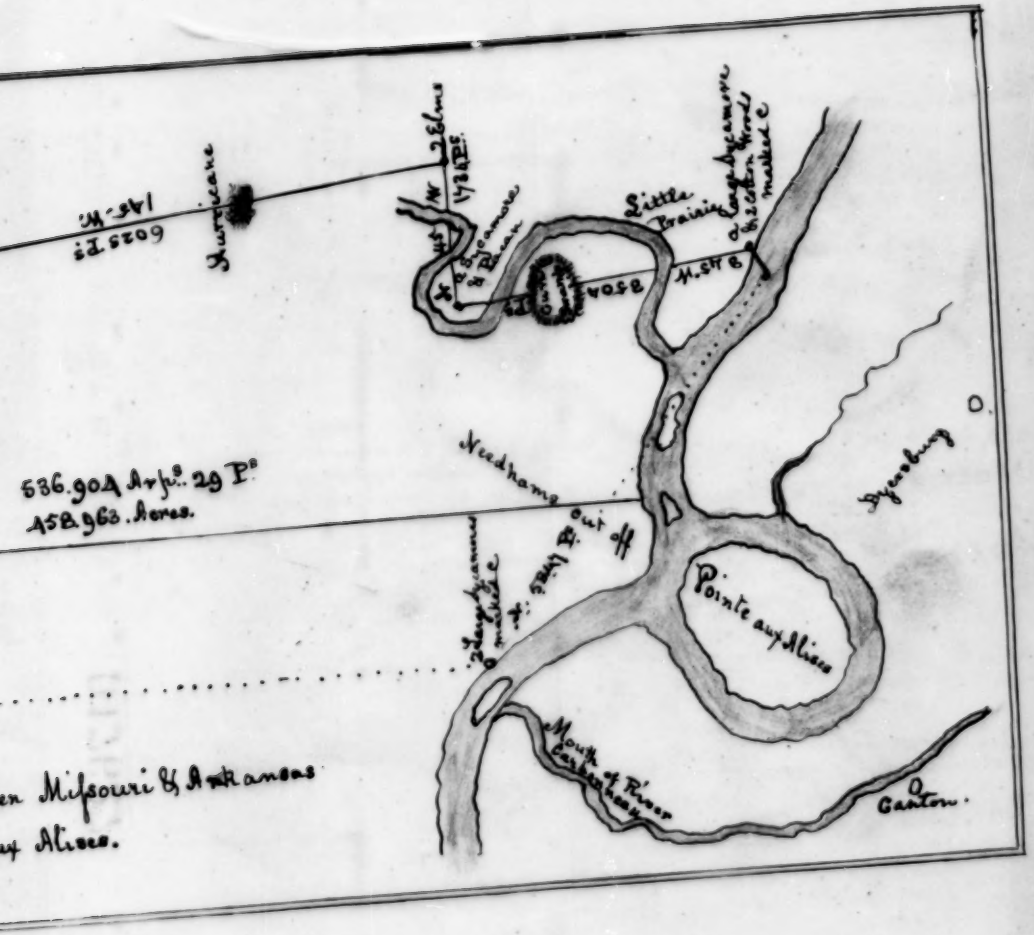
TERRITORY OF LOUISIANA, *District of New Madrid:*

I do certify that the above plat represents a tract of land containing four hundred and fifty-eight thousand nine hundred and sixty-three acres, or five hundred and thirty-six thousand nine hundred and four arpens twenty-nine perches, lying on the forks of the St. Francis river, —— miles below the Little Prairie, surveyed by me from the 30th of January last to the 12th of the present month, for and at the request of James Clamorgan, who claims the same under a Spanish title: beginning at two large sycamores, marked C, on the bank of the Mississippi, running up the same, and following the meanders thereof, to a large cotton wood and two sycamores, marked C, on the bank, at one hundred and ninety-five poles west, and five thousand eight hundred and forty-seven poles north from the beginning, and crossing the river Pemiscoe, near the mouth thereof; then from the cotton wood and two sycamores aforesaid, opposite the middle of the Island au Potin, running S. 45° W., 2504 poles, to a sycamore and pecan wood on the bank of Pemiscoe, after crossing the same at 1056 and at 3036 poles; thence N. 45° W., 1734 poles, to two elms, marked C, after crossing Pemiscoe at 670 and 1020 poles; thence S. 45° W., 6023 poles, to the middle fork of St. Francis, running east of south, crossing the same; and from thence keeping the same course, 3710 poles, to a sycamore and hackberry, on the south bank of the last fork of St. Francis river, running southeast; thence S. 10° W., 6572 poles, down the said fork, crossing the same several times, to a sycamore and willow, marked C, on the bank of the river; and from thence to the beginning.

(Signed) R. A. NASH, *Deputy Surveyor.*



Nota. This Survey is bisected by the line between M
the Glamorgan grant takes in Pointe aux A


Hurricane
6025 Ps
145 W.
Mts NW 136 Chs
173 1/2 Ps
Little Prairie
Long Avenue
Weedham
536.904 Arp. 29 Ps
458.963 Acres.
Long Avenue
Point aux Alises
Byrnsburg
Mouth of River
Canton.
en Missouri & Arkansas
y Alises.

n a
the
t as
ave
ter-
pro-

.

.

the

N.

vey,

con-
and
un-
the
l by
nth,
ame
rked
fol-
yca-
-five
poles
r the
hores
. 45°
f Pe-
ence
Pe-
s, to
g the
, to a
f St.
poles,
more
tance

107.

St. Louis, *Feb.* 28, 1806.

Received for record.

(Signed) ANTOINE SOULARD,
Surv. Gen. for the Terr. of Louisiana.

Recorder's office, St. Louis, Missouri,
September 22, 1836.

I certify the above plat and certificate of survey to be truly copied from book C, pages 183 and 184, of record in this office.

F. R. CONWAY,
Rec. of land titles in the State of Missouri.

The plaintiffs then gave in evidence a document, purporting to be a deed of conveyance from Jaques Clamorgan to Pierre Chouteau, which is in the French language, and a translation of which into the English language, proved and admitted to be correct, is in the words and figures following:

Know all men by these presents, that I, James Clamorgan, dwelling in the town and district of St. Louis, territory of Louisiana, for the price and consideration of the sum of fifteen hundred dollars, which has been duly paid to me by Mr. Peter Chouteau, of the place aforesaid, as I acknowledged by these presents, I have sold, ceded, quit-claimed, surrendered, and transferred, and by these presents I sell, cede, quit-claim, surrender, and transfer to said Peter Chouteau, his heirs or assigns, a certain piece of land, containing five hundred thirty-six thousand nine hundred and four arpens twenty-nine perches, in superficies, situate on the river Mississippi, district of New Madrid, front to said Mississippi, below the place called the Little Prairie, and in the rear on the west fork of the river St. Francis, and on the two sides by the royal domain; which land belongs to me, as having been granted by Don Charles Dehault Delassus, lieutenant governor of New Madrid and dependencies, on the ninth of August, one thousand seven hundred and ninety-six, and surveyed from the 30th January to 12th February, 1806, as is fully established by the record of said documents in the office of the recorder for claims to lands in the territory, book C, page 181, and following; promising to warrant and preserve said land from all troubles, gifts, debts, dowers, hypothecations, and other incumbrances generally, on my part, as on the part of my heirs, executors, and administrators, for the said Peter Chouteau, his heirs or assigns, to enjoy and do with, and dispose of same at his will and pleasure, as a thing to him belonging and by him lawfully acquired, his enjoyment to commence from this day.

In faith of which I have signed and sealed these presents, in the town, district, and territory above mentioned, this 2d May, of the year of our Lord 1809. J. CLAMORGAN. [L. S.]

Signed and sealed in presence of—

Alex. Papin,
M. P. Leduc.

LOUISIANA TERRITORY, *District of St. Louis, ss.*

Before me, the subscriber, one of the judges of the court of common pleas for the district of St. Louis, personally came the above named James Clamorgan, who acknowledged the within instrument of writing to be his free and voluntary act and deed, hand and seal, for the purposes therein mentioned, and as such desired the same to be recorded.

Given under my hand and seal, the day of the date of said act and deed.

AUGUSTE CHOUTEAU. [L. S.]

The plaintiff then read in evidence a document purporting to be a deed of conveyance from Pierre Chouteau and M. P. Leduc to the plaintiffs aforesaid, which said plaintiffs are proved and admitted to be resident and domiciliated citizens of the State of Maryland, which deed aforesaid is in the words and figures following:

This deed, made this first day of June, in the year of our Lord one thousand eight hundred and thirty-seven, between Pierre Chouteau and *Maria* P. Leduc, of the county of St. Louis, and State of Missouri, and John Glenn and Charles M. Thruston, of the State of Maryland, trustees for the purposes mentioned in declaration of trust, executed on the 21st day of February, 1837, witnesseth: that the said Pierre Chouteau and Marie P. Leduc, for and in consideration of the sum of fifty-three thousand six hundred and ninety-nine dollars, ($53,699,) in hand paid, at and before the sealing and delivery of these presents, have granted, bargained, and conveyed, and by these presents do grant, bargain, and convey unto the said John Glenn and Charles M. Thruston, their successors and assigns forever, all that certain tract, piece, or parcel of land, lying and being situated in the county of Madrid, State of Missouri, and extending into the State of Arkansas, and bounded as follows, to wit: beginning on the western side of the river Mississippi, at the place which is opposite to the head of an island, situated at about one hundred arpens below the Little Prairie, which lies at the distance of about thirty miles below the village of New Madrid, in descending the current, and continuing to descend it, until one is placed (on the same western side) right opposite the outlet commonly known under the name of River á Carbono, the mouth of which is on the eastern side of the Mississippi; so that from the said place situated as aforesaid, opposite the mouth of the above mentioned river Carbono, a line be drawn running towards the southwest, or thereabout; said line shall be parallel to the one which is to be drawn from the place situated opposite the head of the island lying as here above stated, at about one hundred arpens below the said Little Prairie; these two lines shall run in the depth in a southwestern direction, or thereabout, and shall be the boundaries of each of those two opposite sides, until the extremities of those two said lines be sufficiently prolonged in the said direction, so as to reach the

banks of the branches of the river St. Francis, the most distant from the Mississippi; which banks of said branches of river St. Francis shall be the boundary and limits to the third side of the land demanded, and the banks of the Mississippi shall be the fourth; to begin from the head of the aforesaid island of the Little Prairie, and descending the current on the western side, until the place situated opposite the said river called River á Carbono;—and which tract contains about five hundred and thirty-six thousand nine hundred and eighty-nine arpens, French measure, be the same more or less, as appears by a survey thereof, made by the proper officers, in the month of January, 1806, and certified as received for record by the surveyor general of the district of Louisiana, on the 28th day of February, 1806, and was granted by the Spanish government in Upper Louisiana, represented by Don Carlos Dehault Delassus, the then commandant of New Madrid and its dependencies, to Jacques Clamorgan, and his representatives; and said concession, survey, and tract of land, have been duly conveyed, for valuable consideration, to the said Pierre Chouteau and Marie P. Leduc, to have and to hold the said granted, bargained, and sold premises, together with all and singular the privileges thereunto appertaining, unto them the said John Glenn and Charles M. Thruston, their successors and assigns, for the purposes in the said declaration of trust mentioned, free from the claim or claims of the said Pierre Chouteau and Marie P. Leduc, or any person or persons claiming by, through, or under them. The words "conveyed" and "convey," written on erasures before signing.

In witness whereof, the parties to these presents have hereunto set their hands and seals, on the day, month, and year first above written.

PIERRE CHOUTEAU, [L. S.]
M. P. LEDUC. [L. S.]

Witness—
GEORGE F. STROTHER.

STATE OF MISSOURI, *County of St. Louis, ss.*

Be it remembered, that on this first day of June, in the year of our Lord one thousand eight hundred and thirty-seven, before me, Henry Chouteau, clerk of the county court for the county aforesaid, which said court is a court of record, personally appeared Pierre Chouteau and Marie P. Laduc, both of whom are personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and acknowledged the same to be their act and deed, severally, for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, at office, in the city of St. [L. S.] Louis, county and State aforesaid, the day and year above written.

HENRY CHOUTEAU, *Clerk.*

The plaintiff then proved by two witnesses that the defendant, William Mitchel, was, at and before the commencement of this action, in possession of a certain piece of land, situated in the county of New Madrid, State of Missouri, and within the boundaries of the tract of land as described in the petition, and grant and plat of survey herein before mentioned, as given in evidence by said plaintiffs, and spread out on this bill of exceptions, and which piece or parcel of land was proved to consist of, and to be co-extensive with, the north fractional half of southeast quarter of section thirty-one, in township seventeen north, range thirteen east of fifth principal meridian, containing fifty-eight acres and fifty one-hundredths; and said plaintiff further proved, that no part of the land included within the lines of the tract described in said grant, had ever been sold or offered for sale by the Government of the United States, and that only a small part of said granted tract had been surveyed by the United States, and which survey had been made by Isaac Woods, deputy surveyor, and by him returned to the office of the surveyor general at St. Louis, under his contract of survey of the 16th March, 1840, and which survey is admitted by the parties to be correct, and to have been examined and approved as correct by said surveyor general.

The plaintiff also read the report of the commissioners under the act of 8th July, 1832, and the acts and proceedings supplemental thereto, on the claim of James Clamorgan, to a tract of 536.904 arpens, which is in the following words:

Class 2.—*No.* 149.

James Clamorgan, claiming 536 *arpens* 904 *perches*, to Don Charles Dehault Delassus, lieutenant colonel of the stationary regiment of Louisiana, and lieutenant governor of New Madrid and dependencies, &c.

James Clamorgan, merchant, residing in the town of St. Louis, has the honor to represent, that he has been strongly encouraged by his excellency the governor general of this province to establish a rope manufactory, for the purpose of making cordage for the use of his majesty's ships, and especially to supply the Havana, at which place his excellency desires that the petitioner should send the cordage, under his protection, conformably to the notice he has given to you on that subject, in order that in all cases the petitioner should have recourse to your goodness, so as to be favored by all your power, particularly in this undertaking, which may become very important to the prosperity of this dependency, and very profitable, in time, to all the inhabitants of this Upper Louisiana, so much the more as the petitioner is connected in correspondence and matters of interest with a powerful house in Canada, which can procure hereafter a sufficient number of farmers to come to this country to teach the cultivation of hemp, and its fabrication into different kinds of cordage in the most perfect manner, thereby ful-

filling the views of the general government, which desires this undertaking to succeed, by all just and honest means which it will be possible to use, in order to exempt his majesty from drawing, henceforth, from foreign countries, an article so important to the fitting out of his navy.

In hopes of attaining this end, the petitioner has made the most pressing demands to obtain from his correspondents in Montreal a considerable number of people fit for this cultivation, whom we are compelled by necessity to attract to this country; although for the present, political circumstances in Canada appear opposed to it, but in more peaceable times this object may indubitably be obtained.

Meanwhile, the petitioner is obliged to secure, beforehand, a title from you, sir, which will guaranty to him the property of a quantity of arable land, proportionate to his views, in order to form an extensive establishment, as soon as circumstances will appear favorable to his undertaking, and when his correspondents will be able to cause to emigrate to this country, without hurting their feelings, the number of people necessary to give a start to this culture, so much desired by the government.

The petitioner hopes, sir, that in consideration of the above statement, and of the particular recommendations of his excellency the governor general of the province, you will be pleased to grant him the quantity of land he wishes to obtain, as much in order to favor him in all that may contribute to the execution and future prosperity of his undertaking, as it will also facilitate to him the means of drawing from foreign parts an emigration of cultivators, who perhaps cannot be obtained but after a considerable lapse of time, and under promises of rewards which the petitioner will be obliged to fulfil.

Therefore he supplicates you to grant him, in the name of his majesty, the tract of land lying on the western side of the Mississippi, to begin from the place opposite the head of an island, situated at about one hundred arpens below the Little Prairie, which is distant about thirty miles from the village of New Madrid, in descending the current, and continuing to follow said current until one is placed on the said western side, right opposite the mouth of the river, commonly called the River a Carbono, which is on the eastern side of the Mississippi, so that from the said place, situated opposite the mouth of the aforesaid river Carbono, a line be drawn towards the interior, running southwest or thereabout; said line shall be prolonged, parallel to the one which will have to be drawn from the place situate opposite the head of the island, as here above stated, at about one hundred arpens below said Little Prairie; these two said lines shall run in the depth, in a southwestern direction or thereabout, and shall be the boundaries of each of those two opposite sides, until the extremities of the said two lines be sufficiently prolonged in the said directions so as to reach the banks of the branches of the river St. Francis, the most distant from the Missis-

sippi, which banks (of said branches) of river St. Francis, shall be the boundary and limit to the third side of the land demanded, and the banks of the Mississippi shall be the fourth, (side of the same,) to begin from the head of the aforesaid island of the Little Prairie, and descending the current on the western side, till the place situated opposite the said river, called river Carbono; in order that, as soon as it is in the power of the petitioner, he may select and improve, in the said tract demanded, the land which is most suitable for the cultivation of hemp; a great part of this said tract being overflowed by ponds and impracticable low swamps, which will prevent the improving of the whole in all its extent. And the petitioner to enjoy and dispose of the same forever, as of a thing to him belonging, and to his heirs and assigns, and even to distribute the said lands, or part of them, if he thinks proper, in favor of such person or persons whom he may judge fit, in order to attain, as much as in his power lies, the accomplishment of his project.

And the petitioner shall never cease to render thanks to your goodness.

Done at New Madrid, this 1st day of August, 1796.

J. CLAMORGAN.

NEW MADRID, *August* 9, 1796.

Having examined the statement contained in the petition, being satisfied as to the means of the petitioner, and of his late partnership with the house of Todd, which may facilitate to him the accomplishment of the undertaking he proposes, the profits of which, if it succeeds, will devolve, in part, to the benefit of this remote country, so miserable on account of the actual want of population; due attention being paid to the particular recommendations made to me by the Baron de Carondelet, governor general of these provinces—(attendo ha tenido a bien el nombrar de commandante de est puesto y dependencias de buscar)—supposed meaning: *considering that he thought fit to recommend to the commandant of this post and dependencies* "*to seek*, by all possible means, the mode of increasing the population, and of encouraging agriculture in all its branches, and particularly that of hemp." It appearing to me that what the petitioner proposes will contribute to the attainment of this last recommendation, I do grant to him and his heirs the land which he solicits, in the place where, and in the same terms as, he asks the same, provided it is not prejudicial to any person. And when he establishes the said land, he shall have it surveyed, not compelling him to have it done immediately, as its extent is so considerable, that it would occasion a ruinous expense to him if he was to execute said survey before the arrival of the families which he must send for to Canada; but as soon as they arrive, and he settles them on said land, he shall have to secure his property by having the same surveyed, in order afterwards to have recourse to the governor general to obtain the approbation and the title in form for this his concession.

CARLOS DEHAUTE DELASSUS.

St. Louis, September 9, 1834. Truly translated from the original. JULIUS DE MUN, *T. B. C.*

No.	Name of original claimant.	Arpens.	Nature and date of claim.	By whom granted.	By whom surveyed; date and situation.
149	James Clamorgan	536.904	Concession 9th August, 1796.	Carlos Dehault Delassus.	R. A. Nash, D. S. from January 30 to February 12, receiv'd for record by Soulard, 28 February, 1806, below New Madrid.

Evidence with reference to minutes and proceedings.

June 21, 1833.

The board met, pursuant to adjournment.

Present: A. G. Harrison, F. R. Conway, commissioners.

James Clamorgan by his legal representative Pierre Chouteau, claiming 536.904 acres of land—see record, book C, page 81; Spanish records of concessions, book No. 3, page 7, No. 7—produces a paper purporting to be an original concession, dated August 9, 1796, by Carlos Dehault Delassus, commandant of New Madrid; also a plat of survey made from the 30th of January to the 12th of February, 1806, certified by Soulard (to have been received for record) 28th of February, 1806; also an original deed of conveyance from Clamorgan to Chouteau.

M. P. Leduc, duly sworn, says that the decree of concession and the signature affixed to it are in the proper handwriting of Carlos Dehault Delassus; that the petition and signature to the same are in the proper handwriting of James Clamorgan, and that the signature to the record of survey is in the proper handwriting of Soulard. See minutes, No. 6, page 179.

August 26, 1835.

The board met, pursuant to adjournment.

Present: F. R. Conway, J. H. Relfe, T. H. Martin, commissioners.

James Clamorgan, claiming 536.904 arpens of land. See book No. 6, page 179.

The board are unanimously of opinion that this claim ought not to be confirmed, the conditions not having been complied with. See book No. 7, page 244.

F. H. MARTIN,
JAMES H. RELFE,
F. R. CONWAY.

And the plaintiffs here closed their case.

The defendant, by his counsel, moved this court to instruct the jury:—

That the plaintiffs are not entitled to recover in this action against the defendant, on the evidence given by them to the jury.

sippi, which banks (of said branches) of river St. Francis, shall be the boundary and limit to the third side of the land demanded, and the banks of the Mississippi shall be the fourth, (side of the same,) to begin from the head of the aforesaid island of the Little Prairie, and descending the current on the western side, till the place situated opposite the said river, called river Carbono; in order that, as soon as it is in the power of the petitioner, he may select and improve, in the said tract demanded, the land which is most suitable for the cultivation of hemp; a great part of this said tract being overflowed by ponds and impracticable low swamps, which will prevent the improving of the whole in all its extent. And the petitioner to enjoy and dispose of the same forever, as of a thing to him belonging, and to his heirs and assigns, and even to distribute the said lands, or part of them, if he thinks proper, in favor of such person or persons whom he may judge fit, in order to attain, as much as in his power lies, the accomplishment of his project.

And the petitioner shall never cease to render thanks to your goodness.

Done at New Madrid, this 1st day of August, 1796.

J. CLAMORGAN.

NEW MADRID, *August* 9, 1796.

Having examined the statement contained in the petition, being satisfied as to the means of the petitioner, and of his late partnership with the house of Todd, which may facilitate to him the accomplishment of the undertaking he proposes, the profits of which, if it succeeds, will devolve, in part, to the benefit of this remote country, so miserable on account of the actual want of population; due attention being paid to the particular recommendations made to me by the Baron de Carondelet, governor general of these provinces—(attendo ha tenido a bien el nombrar de commandante de est puesto y dependencias de buscar)—supposed meaning: *considering that he thought fit to recommend to the commandant of this post and dependencies* " *to seek*, by all possible means, the mode of increasing the population, and of encouraging agriculture in all its branches, and particularly that of hemp." It appearing to me that what the petitioner proposes will contribute to the attainment of this last recommendation, I do grant to him and his heirs the land which he solicits, in the place where, and in the same terms as, he asks the same, provided it is not prejudicial to any person. And when he establishes the said land, he shall have it surveyed, not compelling him to have it done immediately, as its extent is so considerable, that it would occasion a ruinous expense to him if he was to execute said survey before the arrival of the families which he must send for to Canada; but as soon as they arrive, and he settles them on said land, he shall have to secure his property by having the same surveyed, in order afterwards to have recourse to the governor general to obtain the approbation and the title in form for this his concession.

CARLOS DEHAUTE DELASSUS.

St. Louis, September 9, 1834. Truly translated from the original. JULIUS DE MUN, *T. B. C.*

No.	Name of original claimant.	Arpens.	Nature and date of claim.	By whom granted.	By whom surveyed; date and situation.
149	James Clamorgan	536.904	Concession 9th August, 1796.	Carlos Dehault Delassus.	R. A. Nash, D. S. from January 30 to February 12, receiv'd for record by Soulard, 28 February, 1806, below New Madrid.

Evidence with reference to minutes and proceedings.

June 21, 1833.

The board met, pursuant to adjournment.

Present: A. G. Harrison, F. R. Conway, commissioners.

James Clamorgan by his legal representative Pierre Chouteau, claiming 536.904 acres of land—see record, book C, page 81; Spanish records of concessions, book No. 3, page 7, No. 7—produces a paper purporting to be an original concession, dated August 9, 1796, by Carlos Dehault Delassus, commandant of New Madrid; also a plat of survey made from the 30th of January to the 12th of February, 1806, certified by Soulard (to have been received for record) 28th of February, 1806; also an original deed of conveyance from Clamorgan to Chouteau.

M. P. Leduc, duly sworn, says that the decree of concession and the signature affixed to it are in the proper handwriting of Carlos Dehault Delassus; that the petition and signature to the same are in the proper handwriting of James Clamorgan, and that the signature to the record of survey is in the proper handwriting of Soulard. See minutes, No. 6, page 179.

August 26, 1835.

The board met, pursuant to adjournment.

Present: F. R. Conway, J. H. Relfe, T. H. Martin, commissioners.

James Clamorgan, claiming 536.904 arpens of land. See book No. 6, page 179.

The board are unanimously of opinion that this claim ought not to be confirmed, the conditions not having been complied with. See book No. 7, page 244.

F. H. MARTIN,
JAMES H. RELFE,
F. R. CONWAY.

And the plaintiffs here closed their case.

The defendant, by his counsel, moved this court to instruct the jury:—

That the plaintiffs are not entitled to recover in this action against the defendant, on the evidence given by them to the jury.

The court did instruct the jury as requested by the defendant, and the jury, according to said instruction, found for the defendant.

To which instruction the plaintiffs, by their counsel, except; and pray said exception may be signed and sealed by the court; which is done accordingly.

J. CATRON, [SEAL.]
R. W. WELLS. [SEAL.]

MISSOURI DISTRICT, *sct:*

I, Joseph Gamble, clerk of the circuit court of the United States for the district of Missouri, certify that the foregoing, from page one to fifteen, both inclusive, is a full and true transcript of the record and proceedings of said court in a certain matter of controversy therein decided between John Glenn and Charles M. Thruston, plaintiffs, and William Mitchel, defendant, as the same remains on file and of record in my office.

In testimony whereof I hereto subscribe my name and affix the seal of said court, at office in the city of St. Louis, the [L. S.] sixth day of July, in the year eighteen hundred and forty-three. JO. GAMBLE, *Clerk.*

JOHN GLENN and CHARLES M. THRUSTON, vs. WILLIAM MITCHELL. } Supreme Court of the United States.

And now, at this day, came the said John Glenn and Charles M. Thruston, by their attorney, and say, that in the record and proceedings there is manifest error in this, to wit, that, by the record aforesaid, it appears that the judgment, in form aforesaid, was given for the said William Mitchell, when, by the law of the land of these United States and of the State of Missouri, the said judgment ought to have been given for the said John Glenn and Charles M. Thruston against the said William Mitchell.

There is error also in this, the instructions prayed for by said William Mitchell, and by said court given to the jury, are contrary to law, and ought to have [been] refused, and the contrary instructions given, leaving to the jury the finding of matters of pure fact.

As same appears by the record aforesaid, and said John Glenn and Charles F. Thruston pray that the judgment aforesaid, for the errors aforesaid and others, may be reversed, annulled, and entirely held as void, and that this, the said John Glenn and Charles M. Thruston, may be restored to all things which they have lost by reason of the judgment aforesaid.

L. E. LAWLESS, *Attorney for said John Glenn and Charles F. Thruston.*

MISSOURI DISTRICT, *sct:*

The President of the United States to William Mitchel, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington city,

on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the United States for the Missouri district, wherein John Glenn and Charles M. Thruston are plaintiffs in error, and William Mitchell is defendant in error, to show cause, if any there be, why judgment rendered against the said John Glenn and Charles M. Thruston, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Catron, one of the justices of the Supreme Court of the United States, the 22d day of April, in the year eighteen hundred and forty-three.

J. CATRON,
an Asso. Jus. S. C. U. S.

L. E. Lawless maketh oath and saith that, on this day, the 24th April, 1843, at St. Louis, county of St. Louis, State of Missouri, this deponent served the above citation by delivering a copy of same to the attorney of said defendant.

L. E. LAWLESS, *Attor'y of Plffs.*

Subscribed and sworn to before J. Catron, an associate justice of the S. C. U. S., this 24th day of April, 1843.

J. CATRON.

Know all men by these presents that I, Luke E. Lawless, am held and firmly bound unto William Mitchel, in the sum of two hundred dollars; for the payment whereof, I bind myself, my heirs, &c. As witness my hand and seal, the 22d day of April, eighteen hundred and forty-three.

The condition of this obligation is such, that, whereas John Glenn and Charles M. Thurston have sued out of the Supreme Court of the United States a writ of error, directed to the judges of the circuit court of the United States, for the Missouri district, returnable to the said Supreme Court, to be held at Washington city on the second Monday of January next. Now, if the said John Glenn and Charles M. Thruston, who are plaintiffs in error, shall prosecute their writ with effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be void.

L. E. LAWLESS. [L. S.]

Acknowledged before me, in open court, at St. Louis, the 22d day of April, 1843.

J. CATRON,
Ass. Jus. S. C. U. S.

A true copy.
Test:

JO. GAMBLE,
Clk. U. S. C. C., Mo. Dist.